

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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JAN 29 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of )  
 )  
GTE CORPORATION, )  
Transferor, )  
 )  
and )  
 )  
BELL ATLANTIC CORPORATION, )  
Transferee )  
 )  
for Consent to Transfer Control )

CC Docket No. 98-184

**OPPOSITION OF SPRINT COMMUNICATIONS COMPANY L.P.**

Sprint Communications Company L.P. ("Sprint"), by its attorneys, hereby opposes the "Joint Objection to Disclosure of Stamped Confidential Documents" ("Objection") filed by Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE") (together, the "Applicants") concerning the letters of acknowledgement filed by Mr. Leon M. Kestenbaum and Mr. Craig D. Dingwall of Sprint. The Objection is both procedurally and substantively flawed and warrants prompt dismissal by the FCC.

**DISCUSSION**

The Objection is flawed as both a procedural and a substantive matter. As a matter of procedure, the Commission would be perfectly justified if it summarily refused to entertain the Objection. The Applicants concede that they failed to timely file the Objection in accordance with the terms of the Protective

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Order.<sup>1</sup> After careful consideration of the Protective Order and the relevant standards for in-house counsel, Mr. Kestenbaum and Mr. Dingwall executed the letters of acknowledgement. Undersigned counsel filed the letters on January 5, 1999, thereby creating a January 8, 1999 deadline for the filing of objections.<sup>2</sup> The Applicants filed the Objection more than two weeks later on January 25, 1999.

The Applicants also failed to meet their fundamental obligation to serve the Objection upon Sprint or its attorneys in accordance with the terms of the Protective Order, until specifically requested to do so. Sprint was informed on January 27 that the Objection had been filed two days earlier on January 25 only after Sprint instituted inquiries as to the cause of delay in the availability of the confidential materials.

Sprint has made every effort to accommodate the Applicants by providing notice of the individuals that would review the documents well in advance of the documents' availability and by requesting access to the documents in a timely manner.<sup>3</sup> As noted

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<sup>1</sup> See Objection at n.2; GTE Corp. and Bell Atlantic Corp., For Consent to Transfer of Control, CC Dkt. No. 98-184, Order Adopting Protective Order at Exhibit A (rel. Nov. 19, 1998) ("Protective Order").

<sup>2</sup> See Letter from Michael G. Jones, Associate, Willkie Farr & Gallagher, to Magalie Roman Salas, Secretary, Federal Communications Commission (filed in CC Dkt. No. 98-184 on Jan. 5, 1999). Sprint served the filing by hand delivery on January 5 to the individuals designated by the FCC as the appropriate contact persons at Bell Atlantic and GTE. See Protective Order ¶¶ 3,5.

<sup>3</sup> On January 14, 1999, Sprint served, via hand delivery to the Applicants, its request to review any documents the Applicants filed in response to the FCC's request for additional materials. See Letter from Sue D. Blumenfeld,

above, the Applicants' failure to comply with the well-understood procedural requirements of the Protective Order warrants summary rejection of the Objection. Even if the Commission declines to take such action, Sprint respectfully requests that the Commission issue its decision on the merits as expeditiously as possible to facilitate Sprint's timely and complete review of the documents.<sup>4</sup>

The substance of the Applicants' Objection lacks merit as well, and review of the documents by both Mr. Kestenbaum and Mr. Dingwall is consistent with and permitted by the Protective Order.

The Protective Order states, in pertinent part,

Subject to the requirements of paragraph 5, Stamped Confidential Documents may be reviewed by outside counsel of record and in-house counsel who are actively engaged in the conduct of this proceeding, provided that those in-house counsel seeking access are not involved in competitive decision-making, i.e., counsel's activities, association, and relationship with a client that are such as to involve counsel's

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Partner, Willkie Farr & Gallagher, to Don Evans, Bell Atlantic Corp. and Alan Ciamporzero, Vice President, Regulatory Affairs, GTE Corp. (Jan. 14, 1999) (on file with Willkie Farr & Gallagher). This request, in conjunction with the Applicants' filing of confidential materials with the FCC on January 15, triggered a two-day window for the Applicants to provide copies of all non-copying prohibited materials to Sprint by January 19 (not counting the intervening weekend and holiday). The Applicants failed to produce the documents to Sprint within the time required by the Protective Order, and they did not respond in any manner until January 25, when counsel to Sprint initiated inquiries concerning the status of the requested materials.

<sup>4</sup> In the interim, Sprint's outside counsel and consultants have agreed to review the confidential materials beginning on January 28, 1999, but to wait to permit Mr. Kestenbaum and Mr. Dingwall to review the materials until this dispute is resolved by the Commission.

advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor.<sup>5</sup>

Mr. Kestenbaum and Mr. Dingwall qualify under this standard.

Both Mr. Kestenbaum and Mr. Dingwall are employed as in-house counsel to Sprint and neither is involved in "competitive decision-making" as defined in the Protective Order. Mr.

Kestenbaum's work consists of formulating regulatory positions and conveying them on behalf of Sprint to the FCC and the United States Department of Justice ("DOJ"), and reporting the results of such representation. Mr. Dingwall is responsible for formulating regulatory positions, conveying and advocating them on behalf of Sprint to state regulatory agencies, and reporting the results of such representation. With respect to the proposed Bell Atlantic - GTE merger, Mr. Dingwall is the attorney responsible for coordinating Sprint's participation and advocacy concerning this merger before state Commissions, the FCC and the DOJ. As such, Mr. Kestenbaum and Mr. Dingwall function precisely as attorneys for their client.

The Applicants further suggest that Mr. Kestenbaum and Mr. Dingwall should be barred from access if Sprint uses Mr. Kestenbaum's or Mr. Dingwall's advice to inform business strategies or decisions.<sup>6</sup> The ramifications of this erroneous interpretation would be that all in-house attorneys that advise corporate management on regulatory matters -- precisely those

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<sup>5</sup> Protective Order ¶ 3.

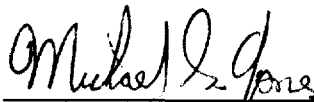
<sup>6</sup> See Objection at 3.

attorneys that would be involved in this merger proceeding -- would be prohibited from reviewing confidential materials whether or not those attorneys actually participate in such business decisions. Such a result is plainly contrary to the language and intent of the Protective Order, and the Objection must be rejected.

# CONCLUSION

Sprint respectfully urges the FCC to dismiss the Objection and to affirm that Mr. Leon M. Kestenbaum and Mr. Craig D. Dingwall of Sprint may review all confidential materials filed by the Applicants pursuant to the Protective Order.

Respectfully submitted,



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Sue D. Blumenfeld  
Michael G. Jones  
Jay T. Angelo

**WILLKIE FARR & GALLAGHER**

Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20036  
(202) 328-8000

Attorneys for Sprint  
Communications Company L.P.

January 29, 1999

## CERTIFICATE OF SERVICE

I, Catherine M. DeAngelis, do hereby certify that on this 29th day of January, 1999, copies of the foregoing "Opposition of Sprint Communications Company L.P." were hand delivered to the following parties:

Charles B. Molster III  
Winston & Strawn  
1400 L Street, N.W.  
Washington, DC 20005-3502

Gerald F. Masoudi  
Kirkland & Ellis  
655 Fifteenth Street, N.W.  
Washington, DC 20005


Janice Myles  
Policy and Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 544  
Washington, DC 20554

To-Quyen Truong  
Policy and Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 544  
Washington, DC 20554

Michael Kende  
Policy and Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 544  
Washington, DC 20554

Carol Matthey  
Policy and Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 544  
Washington, DC 20554

International Transcription Service  
Room 140  
2100 M Street, N.W.  
Washington, D.C. 20554

  
Catherine M. DeAngelis